

Exhibit 12

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Philip Wong, Frederic Chaussy, and Leslie
Marie Shearn, individually, on behalf of all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

vs.

HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 3:07-cv-2446 MMC

NOTICE OF COLLECTIVE ACTION

TO: ALL PRESENT AND FORMER RETAIL MORTGAGE LENDING CONSULTANTS, SENIOR RETAIL MORTGAGE LENDING CONSULTANTS, AND PREMIER MORTGAGE SALES OFFICERS (“LOAN OFFICERS”) WHO WORKED FOR HSBC MORTGAGE CORPORATION (USA), AND HSBC BANK USA, N.A., (“HSBC”) FROM MAY 7, 2004 TO THE PRESENT.

RE: FAIR LABOR STANDARDS ACT LAWSUIT FILED AGAINST HSBC.

INTRODUCTION

The purpose of this Notice is to inform you of a collective action lawsuit brought against HSBC, to advise you of how your rights may be affected by this action, and to instruct you on the procedure to make a claim if you choose to do so.

DESCRIPTION OF THE ACTION

On May 7, 2007, an action was filed against Defendant HSBC on behalf of the named Plaintiffs and all other similarly-situated individuals who worked as Loan Officers or Sales Assistants¹ for HSBC during the past three years. Specifically, the action alleges that these individuals are owed overtime pay under the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207, for hours worked in excess of forty (40) per week. Plaintiffs also seek an additional amount as liquidated damages, as well as attorneys’ fees and costs. This litigation is currently in the early pretrial stage.

Generally, the overtime provisions of the FLSA require that, for all hours over forty hours per week that an employee works, the employer must compensate the employee at the rate of one and one-half times his or her regular hourly rate, unless that employee is properly classified as “exempt” from the overtime provisions of the FLSA. The Plaintiffs in this lawsuit claim that during one or more weeks of their employment with HSBC, they worked in excess of forty hours, but were not paid overtime at the rate of one and one-half times their hourly rate for the hours they worked in excess of forty. Plaintiffs claim that HSBC misclassified them as exempt from overtime.

HSBC denies Plaintiffs’ allegations in their entirety. Specifically, HSBC asserts that the company properly classified its current and former Loan Officers – including Plaintiffs and the

¹ Sales Assistants are not part of the present notice.

1 class of employees Plaintiffs seek to represent – as exempt from the receipt of overtime wages
2 because these current and former employees are, and at all times were, primarily performing the
3 work of overtime-exempt employees. HSBC also contends that it properly paid all of its current
4 and former Loan Officers.

5 **PERSONS ELIGIBLE TO RECEIVE THIS NOTICE**

6 The named Plaintiffs seek to sue on behalf of themselves and also on behalf of other
7 employees with whom they are similarly-situated. Those individuals that Plaintiffs allege are
8 similarly-situated are current and former Loan Officers employed by HSBC anywhere in the
9 United States from May 7, 2004 to the present.

10 This notification is only for the purpose of determining the identity of those persons who
11 wish to be involved in this case and has no other purpose. Your right to participate in this lawsuit
12 may depend on a later decision by the United States District Court that you and the representative
13 Plaintiffs are actually “similarly-situated.”

14 **YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

15 If you are or were a Loan Officer at HSBC during the previous three years, you may have
16 a right to participate in this lawsuit. Enclosed you will find a document entitled “Plaintiff Consent
17 Form and Declaration.” If you choose to join this lawsuit, and thus participate in any recovery
18 that may result from this lawsuit, assuming the Court determines that you are similarly-situated to
19 the named Plaintiffs, it is extremely important that you read, sign and return the Consent Form
20 and Declaration by mail to Plaintiffs’ counsel at the following address:

21 Nichols Kaster & Anderson, PLLP
22 Attn. Paul Lukas
23 4600 IDS Center
24 80 S. 8th Street
25 Minneapolis, MN 55402
26 Toll-Free Telephone: (877) 448-0492
27 Facsimile: (612) 215-6870

28 The “Plaintiff Consent Form and Declaration” must be postmarked by ____[60 days
after new notice is mailed], 2008.

EFFECT OF JOINING OR NOT JOINING THIS LAWSUIT

If you choose to join this action, you and HSBC will be bound by any ruling, judgment, or award, whether favorable or unfavorable. You will also be bound by, and will share in, any settlement that may be reached on behalf of the class. In addition, Nichols Kaster & Anderson will seek to be compensated for their efforts in litigating this case, at least 1/3 of all proceeds, and up to a combined 40% of all recovery, which will proportionately reduce the award that each class member would receive.

You should also understand that if you join the lawsuit, then you may, but will not necessarily, be required to provide documents to HSBC's lawyers and/or attend a deposition and answer HSBC's lawyers' questions under oath.

If you decide to participate in this action, you will not incur any costs at all during or after the litigation process, since Nichols Kaster & Anderson has agreed to absorb all such costs.

If you do not join this action, you will not be bound by any ruling, judgment, award, or settlement, entered in this case, favorable or unfavorable. If you do not to join this action, you are free to take action on your own.

STATUTE OF LIMITATIONS

The FLSA has a maximum statute of limitations of three years. If you choose to join this action and the Court finds in favor of the Plaintiffs, you may be able to recover back wages only during weeks you worked within three years of the date you file your "Plaintiff Consent Form." If you choose not to join in this action, then you may file your own action. Be advised that the clock will still be running on your time limit for filing your own action, if you do not join this lawsuit.

NO RETALIATION PERMITTED

The law prohibits retaliation against employees for exercising their rights under the FLSA. Therefore, HSBC is prohibited from discharging you or retaliating against you in any other

1 manner because you choose to participate in this action.

2 **YOUR LEGAL REPRESENTATION IF YOU JOIN**

3 If you choose to join this case by filing a Plaintiff Consent Form, you will be agreeing to
4 representation by Plaintiffs' Counsel:

5
6 **Nichols Kaster & Anderson, PLLP**

7 Donald H. Nichols, Paul J. Lukas, and Tim Selander
8 4600 IDS Center, 80 South 8th Street
9 Minneapolis, MN 55402

10 **Nichols Kaster & Anderson, LLP**

11 Bryan Schwartz and Matt Helland
12 One Embarcadero Center, Suite 720
13 San Francisco, CA 94111
14 Toll Free Telephone: (877) 448-0492
15 Facsimile: (612) 215-6870
16 www.nka.com

17 The Plaintiffs' attorneys are being paid on a contingency fee and/or statutory basis, which means
18 that if there is no recovery, there will be no attorneys' fees. The specific terms and conditions of
19 representation will be contained in a fee agreement entered into by Plaintiffs' attorneys and you.

20 **FURTHER INFORMATION**

21 Further information about this lawsuit or this notice can be obtained by contacting
22 attorneys for Plaintiffs:

23 **BRYAN SCHWARTZ**

24 **NICHOLS KASTER & ANDERSON, LLP**

25 One Embarcadero Center, Suite 720

26 San Francisco, CA 94111

27 Telephone: (877) 448-0492

28 Facsimile: (415) 421-1700

Email: Schwartz@nka.com

www.nka.com

1 **YOU SHOULD NOT CONTACT THE COURT AT THIS TIME.**

2 **CONCLUSION**

3 **THIS NOTICE AND ITS CONTENT HAS BEEN AUTHORIZED BY THE**
4 **UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF**
5 **CALIFORNIA, THE HONORABLE MAXINE CHESNEY, UNITED STATES DISTRICT**
6 **COURT JUDGE.**

7 **THE COURT HAS MADE NO DECISION IN THIS CASE ABOUT THE MERITS**
8 **OF PLAINTIFFS' CLAIMS OR OF DEFENDANT'S DEFENSES.**

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10 _____
11 The Honorable Maxine Chesney
12 United States District Judge
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**CONSENT FORM AND DECLARATION
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Case No. C 07-2446 MMC

I hereby consent to join the lawsuit against HSBC as a Plaintiff to assert claims against it for violations the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

I certify under the penalty of perjury that the following is true and correct:

During the past three years, there were occasions where I worked over 40 hours per week for HSBC and did not receive overtime compensation.

I worked for HSBC as (please check all that apply):

☐ Sr. Retail Mort. Lending Consultant

Signature

Date

☐ Retail Mort. Lending Consultant

Print Name

☐ Premier Mortgage Sales Officer

Address (with apartment number if applicable)

☐ Other Mortgage Sales Employee

Print Name

City, State, Zip Code

**Fax or Mail To:
Nichols Kaster & Anderson, PLLP
Attn: Paul Lukas
4600 IDS Center
80 S. 8th Street
Minneapolis, MN 55402
Toll Free Telephone (877) 448-0492
Facsimile: (612) 215-6870**

Best Phone Numbers

E-Mail Address

Social Security Number

Emergency Contact

HSBC Branch Location Worked